

Biosolids Advisory Group Pellet Marketing and Distribution Criteria

(City Council on November 23, 24 and 25, 1999, adopted this Clause, without amendment.)

The Works Committee recommends that the Biosolids Advisory Group, authorized by Council at its meeting on July 27, 28, 29 and 30, 1999, by its adoption of Clause No. 19 of Report No. 2 of The Works Committee, as amended, be continued, that other stakeholders including rural participants be invited to join the Advisory Group, and that the Advisory Group participate in:

- (1) monitoring Toronto sludge quality through a half-yearly review which examines, but is not limited to, the presence of dioxins, mercury and endocrine disruptors; and**
- (2) an annual review of pellet use.**

The Works Committee reports, for the information of Council, having requested the Commissioner of Works and Emergency Services to report directly to Council for its meeting commencing on November 23, 1999, responding to the concerns expressed by Ms. Maureen Reilly, Sludge Watch, and Ms. Shelley Petrie, Toronto Environmental Alliance, during their deputations.

The Works Committee submits the following communication (October 6, 1999) from the City Clerk:

The Works Committee on October 6, 1999, had before it a report (October 6, 1999) from the Commissioner of Works and Emergency Services presenting criteria developed by the Biosolids Advisory Group for consideration by the City to assist in its negotiations with USF Canada on the biosolids pellet marketing contract, as requested by Council; submitting two lists of criteria, List A, for which there was unanimous agreement of the group, and List B, for which there was no unanimous agreement; noting that all criteria proposed by the group will be considered by the City in its negotiations with USF Canada; and recommending that the report be received for information.

The Committee also had before it a communication (October 6, 1999) from the Toronto Environmental Alliance, submitting a briefing note with respect to the criteria to be applied to the contract with USF Canada.

The Committee endorsed List A embodied in the aforementioned report for discussion with the contractor; and deferred consideration of List B until its next meeting, scheduled to be held on November 3, 1999, on the understanding that the contract not be signed pending such further consideration of List B.

(Report dated October 6, 1999, addressed to the
Works Committee from

the Commissioner of Works and Emergency Services)

Purpose:

This report presents criteria developed by the Biosolids Advisory Group for consideration by the City to assist in its negotiations with USF Canada on the biosolids pellet marketing contract.

Funding Sources, Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendation:

It is recommended that this report be received for information.

Council Reference/Background/History:

In order to support the move from incineration to beneficial use of biosolids at the Ashbridges Bay Treatment Plant by December 31, 2000, the City conducted extensive public consultation in the City of Toronto. Public consultation on the development of the Biosolids Beneficial Use Program was delivered from July 6, 1998, to February 9, 1999. The Biosolids Multi-Stakeholder Committee (BMSC) and the Independent Review Committee (IRC) were formed to assist the City in the development of the program. BMSC members included local Councillors, environmental groups, neighbourhood industry, citizen representatives of the treatment plant committees, and union representatives. The BMSC provided input on the development of the biosolids program and selection of biosolids beneficial use technology. The IRC included members from the University of Guelph, Water Technology International, Ministries of Environment and Health, and representatives from other jurisdictions that have already implemented beneficial use programs. The IRC has provided advice and independent peer review at all critical stages of program development.

At its meeting of March 2, 3, and 4, 1999, by adoption of Clause No. 23, Report No. 5 of The Strategic Policies and Priorities Committee, Council granted authority to enter into agreements with USF Canada to design and build a biosolids pelletization facility at the Ashbridges Bay Treatment Plant and to market and distribute the biosolids pellets produced as a fertilizer. Following negotiation, an agreement was entered into with USF Canada to design and construct the pelletization facility. Work on this project has been initiated with the facility to be fully operational by December 31, 2000.

In accordance with Council authority, the City is currently in the process of negotiating an agreement with USF Canada to market and distribute the biosolids pellets. USF Canada has agreed to extend the deadline to enter into a marketing agreement with the City until November 30, 1999.

The Works Committee at its meeting of July 14, 1999, requested the Commissioner of Works and Emergency Services to report to the following Council meeting on recommendations from

Councillor Layton regarding negotiations with USF Canada on the marketing and distribution of the pellets.

On July 22, 1999, the Commissioner of Works and Emergency Services reported to Council that staff would act on the recommendation that an advisory group be convened to provide input to the City for consideration in its negotiations with USF Canada. Input was to be sought on the transportation, marketing and distribution of biosolids pellets.

Comments and/or Discussion and/or Justification:

As directed by Council, the role of the Biosolids Advisory Group (BAG) was to:

- (a) develop a set of criteria, for consideration by the City, to assist in its negotiations with USF Canada. The criteria will be based on protecting human and environmental health in Toronto and anywhere else the pellets might end up; and
- (b) report back to the Works Committee prior to the signing of the contract.

Members of the BAG included Councillors from the Works Committee, City staff from Water Pollution Control, Purchasing and Public Health, consultants, representatives from CUPE Locals 416 and 79, and members of the environmental community including the Toronto Environmental Alliance, Citizens for a Safe Environment, and the Safe Sewage Committee.

The BAG met for two criteria development workshops, on September 9, 1999, and October 1, 1999. The meetings were held at Metro Hall and were facilitated by the City's Public Consultation and Community Outreach Unit. Through workshop discussions, it became evident that the BAG members could not achieve consensus on all criteria that they had proposed. Members of the BAG agreed to two lists of criteria. The "A" list represents criteria for which there was unanimous agreement. The "B" list represents criteria for which there was not unanimous agreement. The BAG members agreed that both "A" and "B" lists would be presented in this report. The "B" list reflects areas where there is some concern by some members of the BAG about the safety of biosolids, monitoring and testing, blending, certain pellet uses and restrictions, regulatory environment and program diversity.

List A

Criteria for which there was unanimous agreement of the group is presented in the "A" list, made up in no particular order, of the following 20 criteria:

- (1) Toronto pellets must be stored separately at the USF Canada facility;
- (2) USF Canada will provide storage for pellets that will meet all fluctuations for peak/seasonal product demand and pellets must be stored in a dry enclosed storage;
- (3) City of Toronto reserves the right to inspect any USF Canada facilities that are under contract to the City and the right of entry will include spot inspections;

- (4) USF Canada will notify the City of the location, capacity, etc. of all storage facilities;
- (5) storage will include fire protection measures;
- (6) USF Canada will consider the use of rail transportation wherever feasible;
- (7) spill response protocol and/or contingency plan must be provided to the City for review and approval;
- (8) all transportation, storage and marketing is subject to review and approval by the City including but not limited to the type and number of vehicles;
- (9) pellets must be kept dry during transportation and storage;
- (10) haulers should meet or exceed all guidelines of the Ministry of Transportation or any regulations/guidelines related to transportation of biosolids;
- (11) biosolids pellets must be labeled and include clear instructions for proper use;
- (12) no farmer should be paid to take the product;
- (13) no addition of biosolids pellets to food or feed products;
- (14) uses for biosolids pellets were recommended as: golf courses; forests; mine tailings (if the Legal Department agrees there is no liability); remote park use; conservation areas; provincial/federal parks; rehabilitation of landfill sites; City of Toronto parks; re-vegetation/land reclamation with legal approval only; and traffic islands;
- (15) regular reporting by USF Canada to the City indicating who purchased the biosolids, quantity of biosolids sold in which markets, type of public consultation, and details for revenue sharing purposes;
- (16) City has the right to audit USF Canada's program;
- (17) contract with USF Canada should be shorter than 15 years, one option suggested was to renew after five years;
- (18) City should not specify a minimum guaranteed amount of pellets to be supplied to USF Canada;
- (19) mechanisms for resolving disputes should be included in the contract; and
- (20) contract should include termination clauses, liquidation damages and performance bonds.

List B

The “B” list criteria for which there was not unanimous agreement of the group, in no particular order, includes the following nine criteria:

- (1) the City should reserve the right to review and approve anything the biosolids pellets may be blended with;
- (2) USF Canada does not sell pellets for home use for three to five years, until more information is provided through studies that are currently being conducted;
- (3) metal identification should be on product label;
- (4) no use on root crops; food crops; agricultural crops and seeding hills for bank erosion;
- (5) no home use until the federal government has completed its study of dioxins in biosolids, the sewer use by-law has been passed, and there has been an independent review of Toronto’s biosolids pellets for contamination;
- (6) there should be some form of monitoring or record keeping of soil concentrations for awareness of “state” of soil;
- (7) mandate pre-testing and on-going soil testing to bulk users;
- (8) agricultural use of pellets should be under the Ontario Biosolids Land Application Guidelines for agricultural use with “upset” limit or cut-off point for application; and
- (9) need labeling and instructions to include any necessary cautions on the label as required; should indicate that standards have been met.

Conclusions:

The Biosolids Advisory Group agreed that all members could not agree to all the criteria as developed. In order to reflect all the criteria, even those for which there was a lack of consensus, an “A” list and “B” list of issues were developed. The “A” list reflects criteria for which there was unanimous agreement and includes 20 criteria. The “B” list includes nine criteria for which there was not unanimous agreement.

All criteria proposed by the BAG will be considered by the City in its negotiations with USF Canada on the marketing and distribution of biosolids pellets.

Contact Names:

Christine Iamonaco
Public Consultation and Community Outreach
Technical Services
Phone: (416) 392-4312
Fax: (416) 392-2974

Robert Pickett
Director, Water Pollution Control
Water and Waste Water Services
Phone: (416) 392-8230
Fax: (416) 397-0908

The Works Committee also submits the following communication (November 3, 1999) from Councillor Jack Layton, Don River:

Recommendations:

That the following criteria be adhered to by City staff during the negotiations with USF Canada:

- (a) delay giving authorized for USF Canada to market Toronto pellets for home use until Year three of the contract or until an expert panel made up of scientists, environmentalists, City staff, the Medical Officer of Health, Councillors and other interested people have determined that home use of Toronto pellets is environmentally safe;
- (b) a contract of no more than five years be signed with provisions to renew and with provisions to assess the disposition option of pellets;
- (c) a requirement that the land application of all Toronto pellets meet the Ontario guidelines for sewage sludge of eight tonnes per hectare over a five-year period;
- (d) a requirement that Toronto Pellets are not mixed with other municipal sludge, paper mill sludge or other wastes;
- (e) that the Biosolids Advisory Group (BAG) be continued and that other stakeholders including rural participants be invited to join the BAG and that the BAG participate in:
 - (i) monitoring Toronto sludge quality through a half yearly review which examines, but is not limited to, the presence of dioxins, mercury and endocrine disruptors; and
 - (ii) an annual review of pellet use.

The following persons appeared before the Works Committee in connection with the foregoing matter:

- Ms. Karen Buck, Toronto, Ontario, and submitted a communication with respect thereto;
- Ms. Shelley Petrie, Toronto Environmental Alliance;
- Ms. Karey Shinn, Chair, Safe Sewage Committee; and
- Ms. Maureen Reilly, Sludge Watch.

(City Council on November 23, 24 and 25, 1999, had before it, during consideration of the foregoing Clause, the following report (November 22, 1999) from the Commissioner of Works and Emergency Services:

Purpose:

To provide information as requested by the Works Committee at their meeting of November 3, 1999, on concerns regarding the City's Biosolids Beneficial Use Program expressed by Ms. Maureen Reilly, Sludge Watch, and Ms. Shelley Petrie, Toronto Environmental Alliance, during their deputations to the Works Committee.

Financial Implications and Impact Statement:

There are no financial implications arising from this report

Recommendations:

It is recommended that this report be received for information.

Background:

By adoption of Clause No. 2 of Report No. 6 of the Works and Utilities Committee, at its meeting of July 8, 9, and 10, 1998, City Council authorized the Commissioner of Works and Emergency Services to establish the Biosolids Multi-Stakeholder Committee (BMSC) and Independent Review Committee (IRC), retain consultants, and request proposals to allow for the shutdown of sewage sludge incinerators at the Ashbridges Bay Treatment Plant within a three-year period. This initiative is now known as the Toronto Biosolids Beneficial Use Program.

The city retained the Canadian firm of R.V. Anderson Associates (RVA) to assist us in the development of the City's program and, in light of the amount of biosolids research conducted in the US, also enlisted the US firm of Brown and Caldwell to provide additional biosolids expertise.

The Biosolids Multi-Stakeholder Committee (BMSC) and the Independent Review Committee (IRC) were formed to assist the city in the development of the program. BMSC members included local Councillors, environmental groups, neighbourhood industry, citizen representatives of the treatment plant committees, and union representatives. Fourteen meetings of the BMSC were held between July 6, 1998, to February 9, 1999. The BMSC provided input on the development of the biosolids program and selection of biosolids beneficial use technology. The IRC included members from the University of Guelph, Water Technology International, Ministries of Environment and Health and representatives from other jurisdictions that have already implemented successful beneficial use programs. The IRC provided advice and independent peer review at all critical stages of program development.

At its meeting of March 2,3,and 4, 1999, by adoption of Clause No. 23, Report No. 5 of the Strategic Policies and Priorities Committee, Council granted authority to enter into agreements with USF Canada to design and build a biosolids pelletization facility at the Ashbridges Bay Treatment Plant and to market and distribute the biosolids pellets as a fertilizer. Following negotiation, an agreement was entered into with USF Canada to design and construct the

pelletization facility. Work on this project has been initiated with the facility to be fully operational and producing biosolids pellets by December 31, 2000.

In accordance with Council authority the city is currently in the process of negotiating an agreement with USF Canada to market and distribute the biosolids pellets.

The Works Committee at its meeting of July 14, 1999, requested the Commissioner of Works and Emergency Services to report to the following Council meeting on recommendations from Councillor Layton regarding the establishment of an additional advisory group to assist in negotiations with USF Canada on the marketing and distribution of the pellets. Membership of the biosolids advisory group (BAG) was to be established by interested Works Committee members and to include Works Committee members, city staff, representatives from CUPE Local 416 and members of the environmental community.

On July 22, 1999, the Commissioner of Works and Emergency Services reported to Council that staff would act on this recommendation and two criteria development workshops were held on September 9, 1999 and October 1, 1999 to develop criteria for consideration by the city to assist in negotiations with USF Canada. The criteria developed by the BAG were presented to the Works Committee at its meetings of October 6, 1999 and November 3, 1999. Ms. Maureen Reilly and Ms. Shelly Petrie made deputations in connection with the Commissioner's report at the November 3, 1999 Works Committee meeting.

Following Ms. Reilly and Ms. Petrie's deputations The Works Committee requested the Commissioner of Works and Emergency Services to report directly to Council for its meeting commencing on November 23, 1999, responding to concerns expressed by Ms. Maureen Reilly, Sludge Watch, and Ms. Shelly Petrie, Toronto Environmental Alliance, during their deputations.

Comments:

The areas of concerns expressed by Ms. Reilly and Ms. Petrie during their deputations to the Works Committee relate to the City's plans to produce, market and distribute biosolids pellets as a fertilizer and soil amendment. Both Ms. Reilly and Ms. Petrie identified concerns regarding the existing regulatory framework, biosolids pellet quality and pellet safety. In addition, Ms. Reilly was also concerned with the city retaining American consultants, the shortened timeframe for implementing the biosolids program, the city's selection of the pellet marketing contractor, and the level of consultation with rural environmentalists and townships.

It is important to understand why the city has decided to pelletize a portion of the biosolids produced at the ABTP and how this decision was made.

In developing the biosolids beneficial use program the value of diversity and flexibility was recognized by members of the BMSC, the IRC and reiterated by other municipalities that have existing biosolids programs. Diversity and flexibility are required to ensure that a safe beneficial use alternative is available to take over should events cause one program element to lose viability. For the city it was determined that direct land application and pelletization represented the best mix of technologies and provided the greatest diversity in end use markets.

Our consultants, in collaboration with the BMSC, developed a comprehensive beneficial use contractor selection process. It was critical that only proven technology and capable contractors be selected to become part of the city's program and that this decision was not based solely on the price to undertake the work. The selection process and the recommended beneficial use contractors were endorsed by the BMSC, IRC and approved by council in March of 1999.

The production and marketing of biosolids pellets is not new. Products such as Milorganite, a pelletized biosolid produced in Milwaukee, has been sold for decades as a fertilizer and can be purchased at local hardware stores across Ontario. Several other brands such as Triple 'R' and Granulite are marketed in Quebec and in the United States. The Town of Smiths Falls has been producing biosolids pellets for years and the City of Windsor has recently completed construction of a new biosolids pelletization facility.

Toronto's biosolids offer a unique opportunity to return nutrients and much needed organic matter to the soil. Organic matter encourages plant growth and is critical in preventing soil erosion and improving the structure and water retention capability of the soil. Approximately 50% of Toronto biosolids consists of such organic matter. Most Ontario soils are mineral based and would benefit greatly from the addition of biosolids.

Ms. Reilly's claim that the city does not understand the regulatory framework for biosolids pellets is unfounded. Staff have had and continue to have ongoing discussions with the Canadian Food Inspection Agency (CFIA), the Federal agency responsible for the regulation of fertilizer in Canada, the Ministry of Environment (MOE) and the Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA). OMAFRA has been kept fully informed by the city from the beginning of the program as outlined in the attached correspondence from OMAFRA addressed to the city and in an e-mail letter addressed to Ms. Reilly in response to her recent press release. Representatives from the MOE and the Ministry of Health participated on the IRC and provided input and peer review. Not including numerous telephone contacts, staff have met with the MOE (Central Region, Waste Management Policy Branch, Approvals Branch) in relation to the biosolids program on 11 separate instances from March '99 to present with some of these meetings being attended by representatives of OMAFRA.

Toronto's biosolids meet all the standards of the current Federal Fertilizer Act and will be regulated and sold as a fertilizer similar to other commercially available fertilizers that are presently on the market.

Staff will continue to work co-operatively with the CFIA, MOE, OMAFRA and the contractor to ensure that all applicable federal and provincial requirements are met.

On May 14, 1999, staff met with the Ontario Federation of Agriculture (OFA) in relation to the City's biosolids program and have committed to include representation and input from the OFA and other agricultural organizations in the ongoing development of the City's biosolids program. The City's biosolids contractors will be required to deliver the appropriate public consultation and promotion in connection with their programs and in collaboration with the City as required. Such consultation would include affected rural organizations and municipalities.

Biosolids pellets are safe for use a fertilizer and soil amendment.

The Toronto biosolids pellets will be produced using a heat drying process using high temperatures to pasteurize the biosolids and ensure that there are no disease causing organisms in the final pellet product. The dryness of the pellets ensures that they remain pathogen free.

Similar to other commercially available fertilizers, biosolids also contain certain trace elements and metals. Toronto's biosolids meets all metal limits for both the Provincial Land Application Guidelines and the Federal Fertilizer Act. The concentration of metals in Toronto's biosolids are well below the maximum permissible levels. A recent field study conducted by OMAFRA in December, 1995, concluded that "excess metal levels are not a concern in soils which have received multiple applications of sewage biosolids".

In the United States biosolids are regulated by the United States Environmental Protection Agency (USEPA). Scientific research into the safety of biosolids has been exhaustive and extensively peer reviewed by independent scientists. Biosolids is one of the most studied substances in USEPA history. The USEPA biosolids limits for contaminants are based on this research coupled with detailed health risk calculations. It should be noted that the Canadian standards governing biosolids are even more stringent than the USEPA standards.

In a recent study of organic contaminants in Canadian municipal sludges conducted by Dr. M.D. Webber et al in February of 1995, sewage biosolids from across Canada were surveyed. In this study the levels of the dioxins and furans in Toronto's biosolids were found to be extremely low. In general, plants do not take up and accumulate organic compounds such as dioxins, furans and endocrine disrupting chemicals.

Hormone mimicking or endocrine disrupting chemicals such as 4-Nonylphenol have been identified in sewage biosolids. Recent studies conducted by Water Technology International and Agriculture and Agri-Food Canada in London have found that 4-Nonylphenol rapidly biodegrades and disappears in well-aerated agricultural soils thus minimizing any potential for ingestion or contact by humans and animals.

The City will continue to monitor its biosolids for organic compounds to ensure that these low levels are maintained. The city will also actively participate in and continue to monitor ongoing research into organic contaminants such as dioxins, furans and endocrine disrupting compounds and incorporate any new information into the beneficial use program as required.

It is important to note that there has been no documented case where biosolid pellets, have had any adverse impact to human health or the environment. This is supported by the US National Research Council's 1996 study on the use of biosolids for agricultural crops. The National Research Council is made up of representatives from the National Academy of Science, the National Academy of Engineering and the Institute for Medicine.

The agreement with USF Canada to market Toronto's biosolids pellets will include provisions to ensure that the contractor performs as required in an environmentally sound manner and that

the use of biosolid pellets is in accordance with prudent agronomic practice. The city will monitor the contractors operations to ensure that city and public interests are maintained.

To maintain the exceptional quality of Toronto's biosolids the city is committed to rigorous monitoring and strict enforcement of its sewer use by-law. Recent proposed changes to Toronto's sewer use by-law will improve the already high quality of Toronto's biosolids, aid in public acceptance and assure long term sustainability of the City's program.

Ms. Reilly has expressed concern with the city implementing a biosolids beneficial use program prior to completion of the ABTP Environmental Assessment (EA). Although the EA included an assessment of biosolids management alternatives the biosolids beneficial use projects currently underway do not require approval under the ABTP EA.

In order to provide a forum for additional public input, we are establishing a committee to assist and provide advice to the city during the ongoing development and implementation of the city's biosolids program. This committee will be similar to the BMSC and may include or work in collaboration with the recently formed Biosolids Advisory Group.

Conclusions:

There is an overwhelming amount of scientific evidence both in Canada and in the United States that supports the safe use of biosolid pellets as a fertilizer and soil amendment. Biosolid pellet products have been available on the market for decades. Pelletization of biosolids from the ABTP adds much needed diversity to the city's biosolids program. The city will produce a high quality pathogen free pellet which can be sold as a fertilizer under the Federal Fertilizer Act. It is recognized that there is a strong public perception issue related to pellets, and the city, in co-operation with its beneficial use contractors and stakeholders is implementing a safe and sustainable biosolids beneficial use program.

Contact:

*R.M. Pickett, P.Eng.
Director
Water Pollution Control
Telephone 392-8230)*

(A copy of a communication dated November 19, 1999 from Mr. Larry Schut, P. Ag., Provincial Biosolids Specialist, Ministry of Agriculture, Food and Rural Affairs, appended to the foregoing report, is on file in the office of the City Clerk.)

(City Council also had before it, during consideration of the foregoing Clause, the following communication (November 24, 1999) from the Commissioner of Works and Emergency Services:

In reply to concerns surrounding the pelletization of biosolids at the Ashbridges Bay Treatment Plant we would like to clarify the following:

- (1) *The operation and construction of the pelletization facility will not proceed without a Certificate of Approval from the Provincial Ministry of the Environment.*
- (2) *The discussion that City staff have had with the Provincial Ministry of the Environment staff indicates that there is no regulation contemplated that would prohibit the use of biosolids pellets as a fertilizer.*
- (3) *The current quality of the biosolids meets all requirements of the Provincial guidelines governing agricultural application as well as all requirements of the Federal Fertilizer Act. This quality is currently protected by the existing sewer use By-law and the proposed changes to the By-law will only further ensure the biosolids quality is maintained.)*

(City Council also had before it, during consideration of the foregoing Clause, the following report (November 24, 1999) from the City Solicitor:

Purpose:

To respond to concerns raised over potential liability of the City for Biosolids Pellets.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that this report be received for information.

Council Reference/Background/History:

This report is to provide information in connection with a report concerning the marketing of biosolids pellets agreement, which report is before City Council on November 24, 1999.

Comments:

In her letter and deputation to the Works and Emergency Services Committee, Maureen Reilly raises certain issues surrounding the potential liability of the City in connection with the marketing of the pellets to be produced from the City's biosolids. In particular, she is concerned that the City, as generator, will always retain liability for the biosolids even though they will pass out of the City's hands and be hauled and used by other parties. As well, she is concerned that potential users could apply the pellets to lands that had previously received paper sludge, thereby creating liability on the part of the City if the lands which have received both the paper sludge and the pellets turn out to be contaminated. In particular she is concerned that the City could then be mired in a lawsuit as a result of the uncertainty as to the causation of the contamination.

With respect to both issues, the fundamental rules setting out liability are the same. The City would only be liable to a party who suffered loss or damage, if the loss or damage was proven, by the person making the claim against the City, to have been caused by a negligent act or omission of the City or as a result of the willful misconduct of the City. In order to determine whether or not the City was negligent, a court would consider what duty of care the City owed to the party claiming to be damaged, and if a duty of care was owed, what standard of care the City would be required to meet to satisfy that duty.

The City would have a good defence to a claim by demonstrating that its pelletization process and the resulting product, meet or exceed any relevant provincial and federal requirements and guidelines. Further, the City could show how it monitors the process to ensure that the requirements and guidelines are met. In addition, the City intends to include in the pellet marketing contract provisions to require the Contractor and its subcontractors to comply with all applicable laws, regulations, rules, and guidelines. Further, the contract will contain indemnities in favour of the City in the event that the Contractor, or its subcontractors fail to comply with those laws, regulations, rules and guidelines, in addition to indemnities in respect of any negligent or intentional act or omission by the Contractor that results in damage or loss to anyone who then makes a claim against the City.

With respect to liability as the owner of the waste, the City will ensure that, to the extent possible through the contract negotiations, provisions are included in the marketing contract to protect the City from liability. While there is nothing anyone can do to prevent themselves from being sued, it is our intention to ensure that the contract provides the City with as much protection as possible from potential liability.

Conclusions:

Provided that the City acts in accordance with the guidelines, and other standards set out by the other levels of government, and in the absence of negligence or willful misconduct, the City would have a good defence, both in contract and in tort in response to any claims that may be made against it in relation to damages suffered as a result of the land application of the biosolids pellets.

Contact:

*Robert H. Ashley
Solicitor- Municipal Law
Phone: 392-2892
Fax: 397-5624
Robert H. Ashley@mta1.metrodesk.metrotor.on.ca.)*

(City Council also had before it, during consideration of the foregoing Clause, the following communications:

- (i) *(November 12, 1999) from Mr. David Dietlein, Councillor, Ward IV, Township of Scugog, forwarding his comments with respect to the proposal to reclassify sewage sludge pellets as fertilizer;*
- (ii) *(November 17, 1999) from Mr. Paul Verkley, Chair, Ontario Federation of Agriculture Environment Committee, expressing the concerns of the Federation with respect to the diversion of biosolids and requesting an opportunity to participate in discussions with the Works Committee prior to a decision being made in this regard;*
- (iii) *(November 19, 1999) from Ms. Karen Buck, Board Member, Citizens for a Safe Environment, Ms. Karey Shinn, Chair, Safe Sewage Committee and Ms. Shelly Petrie, Staff, Toronto Environmental Alliance, forwarding recommendations from the Biosolids Advisory Group; and expressing concerns about the City's Biosolids Beneficial Use Program; and*
- (iv) *(November 19, 1999) from Ms. Maureen Reilly, Sludge Watch, expressing the concerns of Sludge Watch in respect to alternative sludge management strategies; and requesting that these concerns be referred back to the Works Committee.)*